

Adjournment

Senator Shivers moved that the Senate adjourn until 10:00 o'clock a. m. tomorrow.

The motion prevailed; and the Senate, accordingly, at 5:35 o'clock p. m., adjourned until 10:00 o'clock a. m. tomorrow.

FIFTY-NINTH DAY

(Wednesday, April 23, 1941)

The Senate met at 10:00 o'clock a. m., pursuant to adjournment, and was called to order by President Stevenson.

The roll was called, and the following Senators were present:

Aikin	Martin
Beck	Mauritz
Brownlee	Metcalf
Chadick	Moffett
Cotten	Moore
Fain	Ramsey
Formby	Shivers
Graves	Smith
Hazlewood	Stone
Hill	Sulak
Isbell	Van Zandt
Kelley	Vick
Lanning	Weinert
Lemens	Winfield
Lovelady	York

Absent—Excused

Spears

A quorum was announced present.

Rev. S. B. Culpepper, Chaplain, offered the invocation.

On motion of Senator Aikin and by unanimous consent, the reading of the Journal of the proceedings of yesterday was dispensed with and the Journal was approved.

Leaves of Absence Granted

Senator Spears was granted leave of absence for today on account of important business, on motion of Senator Graves.

Report of Standing Committee

Senator Shivers submitted the following report:

Austin, Texas,
April 22, 1941.

Hon. Coke R. Stevenson, President of the Senate.

Sir: We, your Committee on Oil, Gas and Conservation, to whom was referred

H. B. No. 393, A bill to be entitled "An Act providing that in counties containing a population of not less than eighty-three thousand (83,000) and not more than eighty-three thousand, three hundred and fifty (83,350) as shown by the last preceding Federal Census, and which contain navigation districts, water improvement districts, and water control and improvement districts, the county auditor shall audit books, accounts, records, bills, and warrants of such districts, and other districts created for improvement and conservation purposes which are not administered by the commissioners' court of such counties; and declaring an emergency."

Have had the same under consideration, and I am instructed to report it back to the Senate with the recommendation that it do pass and be not printed.

SHIVERS, Chairman.

Senate Resolution 105

Senator Metcalfe offered the following resolution:

Whereas, Mrs. Ruth Bratton, sponsor of the Senior Class of the Mason Independent School District, Mason, Texas, is in the Capitol with said Senior Class of 1941; now, therefore, be it

Resolved by the Senate of Texas, That the Senate express its pleasure at having these visitors and extend to Mrs. Bratton and the President of the Senior Class the privileges of the floor for the day; and, be it further

Resolved, That the Secretary of the Senate be directed to deliver a copy of this resolution to Mrs. Ruth Bratton, sponsor of the Senior Class, and to the President of the Senior Class.

METCALFE,
LOVELADY.

The resolution was read, and on motion of Senator Metcalfe and by unanimous consent, the resolution was considered immediately.

The resolution was adopted.

Senate Resolution 106

Senator Metcalfe offered the following resolution:

Whereas, There is present at the Bar of the Senate a distinguished member of the press, Mr. Grady Hill, of San Angelo, Texas, who represents the San Angelo Standard-Times; now, therefore, be it

Resolved by the Senate of Texas, That the privileges of the floor be extended to Mr. Hill for today.

The resolution was read, and on motion of Senator Metcalfe and by unanimous consent it was considered immediately.

The resolution was read and was adopted.

Committee Substitute House Bill 8
on Passage to Third Reading

The Senate resumed consideration of the pending special order, same being C. S. H. B. No. 8, the omnibus tax bill, on its passage to third reading.

Senator Metcalfe offered the following amendment to the bill:

(34)

Amend committee substitute for H. B. No. 8, page 3, Article II, Section 1, paragraph 4, by adding after the word "imported" in lines 4 and 5 of said paragraph as follows:

"Provided, however, that the occupation tax on gas shall never be less than one-twelfth (1/12) of one cent per one thousand (1,000) cubic feet of gas sold or produced in this State."

Senator Hazlewood moved to table the amendment.

Yeas and nays were demanded, and the motion to table was lost by the following vote:

Yeas—14

Brownlee	Martin
Cotten	Moffett
Fain	Moore
Hazlewood	Smith
Isbell	Stone
Kelley	Weinert
Lanning	Winfield

Nays—15

Aikin	Hill
Beck	Lemens
Chadick	Lovelady
Formby	Mauritz
Graves	Metcalfe

Ramsey
Sulak
Van Zandt

Vick
York

Absent

Shivers

Absent—Excused

Spears

Senator Van Zandt offered the following substitute for the amendment:

(35)

Amend mimeographed copy of C. S. H. B. No. 8 by striking out all of Article II and insert in lieu thereof the following:

"ARTICLE II

"Section 1. That Section 3, Chapter 73, Acts of the Regular Session of the Forty-second Legislature, as amended by Acts of the Third Called Session of the Forty-fourth Legislature, Chapter 495, Article 4, Section 8, be, and the same is, hereby amended so as to read as follows:

"Section 3. (1) A tax shall be paid by each such producer on the amount of gas produced and saved within this State, and on gas imported into this State upon the first sale thereof an intrastate commerce upon the following basis:

"On all gas, one-tenth (1/10) of one cent (1c) per thousand (1,000) cubic feet; provided, however, that the tax herein levied on gas shall be five (5%) per cent of the market value of said gas whenever the market value thereof is two (2c) cents or more per one thousand (1,000) cubic feet. The market value of gas, as that term is used herein, shall be the actual market value thereof, plus any bonus or premium, or other thing of value paid therefor or which such gas will reasonably bring, if produced in accordance with the laws, rules, and regulations of the State of Texas. In case of a bona fide sale, the tax shall be computed on the producer's gross receipts from such sale. In the absence of a bona fide sale, the tax shall be computed at the rate established by royalty contracts. It is further provided that in the event either of the foregoing methods result in a value which is less than the prevailing sales price as reported for the same kind of gas in similar quantities in the same area, then the tax shall be computed at the prevailing sales price as

established by the reports of other producers. Provided, however, that if any gas is imported into this State from another State, in which latter State a severance, occupation, or excise tax is imposed thereon, the person importing such gas shall not be required to pay another tax thereon under the provisions of this Act.

"The tax hereby levied shall be a liability of the producer of gas and it shall be the duty of such producer to keep accurate records of all gas produced, making monthly reports under oath as hereinafter provided:

"The purchaser of gas shall pay the tax on all gas purchased and deduct the tax so paid from the payment due the producer or other interest holders, including royalty interests, making such payments so deducted to the Comptroller of Public Accounts by legal tender, or cashier's check payable to the State Treasurer.

"Provided, that if gas produced is not sold during the month in which produced, then said producer shall pay the tax at the same rate, and in the same manner as if gas were sold.

"The tax herein levied shall be paid monthly on the twenty-fifth day of each month on all gas produced during the month next preceding by the purchaser or the producer, as the case may be, but in no event shall a producer be relieved of responsibility for the tax until same shall have been paid; and provided, in event the amount of the tax herein levied shall be withheld by a purchaser from payments due a producer and said purchaser fails to make payment of the tax to the State as provided herein, the producer may bring legal action against such purchaser to recover the amount of tax so withheld, together with penalties and interest which may have accrued by failure to make payments, and shall be entitled to reasonable attorney's fees and court costs incurred by such legal action.

"(2). On notice from the State Comptroller, it shall be unlawful for any person to remove any natural or casinghead gas from any lease in this State whenever the owner or operator of said lease has failed to file reports as required under the provisions of this Act.

"(3). Whenever any lease producing natural or casinghead gas changes hands, it shall be the duty of the owner or operator of said lease to note

on his last report that said lease has been sold or transferred, showing the effective date of said change and the name and address of the individual, firm, association, joint stock company, syndicate, copartnership, corporation, agency, trustee, or receiver who will operate said lease and be responsible for the filing of reports provided for in this Act. Further, it shall be the duty of the new owner or operator of said lease to note on his first report that said lease has been acquired, showing the effective date of said change and the name and address of the individual, firm, association, joint stock company, syndicate, copartnership, corporation, agency, trustee, or receiver formerly owning or operating said lease.

"(4). If any producer or purchaser of natural gas or casinghead gas fails or refuses to pay any tax, penalty, or interest within the time and manner provided by this Act, and it becomes necessary to bring suit or to intervene in any manner for the establishment or collection of said claim in any judicial proceeding, any report filed in the office of the Comptroller by such producer or purchaser or representative of said producer or purchaser, or a certified copy thereof certified to by the Comptroller of Public Accounts, showing the amount of natural or casinghead gas produced and the value thereof on which any tax, penalties, or interest have been paid, or any audit made by the Comptroller or his representative from the books of said producer or purchaser, when filed and sworn to by such Comptroller, or his representative, as being made from the records of said producer or purchaser, shall be admissible in evidence in such proceeding, and shall be prima facie evidence of the contents thereof; provided, however, that the incorrectness of said report or audit may be shown.

"In the event the Attorney General shall file suit or claim for taxes provided for in the foregoing, and attach or file as an exhibit any report or audit of said producer or purchaser, and an affidavit made by the Comptroller, or his representative, that the taxes shown to be due by said report or audit are past due and unpaid, and that all payments and credits have been allowed, then, unless the party resisting the same shall file an answer in the same form and manner as required by Article 3736, Revised Civil

Statutes of 1925, as amended by Chapter 239, Acts of the Regular Session of the Forty-second Legislature, said audit or report shall be taken as prima facie evidence thereof, and the provisions of said article are hereby made applicable to suits to collect taxes hereunder."

Senator Lanning moved to table the substitute for the amendment.

Question—Shall the motion to table prevail?

Motion to Recess

Senator Fain moved that the Senate recess to 2:00 o'clock p. m. today.

The motion lost.

The question recurred on the motion to table the substitute for the amendment.

Yeas and nays were demanded, and the motion to table the substitute for the amendment prevailed by the following vote:

Yeas—17

Brownlee	Mauritz
Chadick	Metcalfe
Formby	Moffett
Hazlewood	Moore
Hill	Shivers
Kelley	Smith
Lanning	Stone
Lemens	Vick
Lovelady	

Nays—13

Aikin	Ramsey
Beck	Sulak
Cotten	Van Zandt
Fain	Weinert
Graves	Winfield
Isbell	York
Martin	

Absent—Excused

Spears

Question then recurring on the adoption of the amendment, yeas and nays were demanded.

The amendment was adopted by the following vote:

Yeas—16

Aikin	Martin
Beck	Mauritz
Chadick	Metcalfe
Formby	Ramsey
Graves	Sulak
Hill	Van Zandt
Lemens	Vick
Lovelady	York

Nays—14

Brownlee	Moffett
Cotten	Moore
Fain	Shivers
Hazlewood	Smith
Isbell	Stone
Kelley	Weinert
Lanning	Winfield

Absent—Excused

Spears

Senator Hill offered the following amendment to the bill:

(36.)

Amend C. S. H. B. No. 8 by adding a new Article to be numbered IIa.

"ARTICLE IIa

"Section 1. That in addition to all other licenses and taxes now levied and assessed in the State of Texas, there is hereby levied, upon every person, firm, association, or corporation engaged in gathering gas produced in this State, all as is more fully hereinafter provided, an occupation tax for the privilege of engaging in such business, at the rate of one-fourth ($\frac{1}{4}$ ¢) of one cent per thousand (1,000) cubic feet (corrected to a base pressure of fourteen and sixty-five one hundredths (14.65) pounds per square inch, absolute pressure) of such gas so gathered.

"In determining the quantity of gas for the purposes of such tax and in the calculation of such tax, there shall be excluded:

"(a) Gas injected into the earth for the bona fide purpose of storing, recycling, repressuring, or lifting oil, in the State of Texas.

"(b) Gas used for fuel in connection with plant and/or lease operation and development for oil or gas.

"(c) Gas lawfully vented or flared.

"(d) Gas used for fuel in manufacturing paper.

"For all purposes of this Act, the following terms shall have the following meanings:

"'Gas', for the purposes of this Act, shall mean natural gas and casing-head gas, and residue gas.

"'Gathering gas', for the purposes of this Act, shall mean the first taking or acquiring of custody, possession, title, or control in Texas of gas produced in this State for transmission through a pipe line, after the severance of such gas from the earth, and after the passage of such gas

through any separator, drip, trap, or meter that may be located at or near the well; provided that in the case of gas containing gasoline or liquid hydro-carbons that are removed or extracted in Texas in commercial quantities at a plant by scrubbing, absorption, compression, or any similar process, the term 'gathering gas' shall mean the first taking or acquiring of custody, possession, title, or control of such gas for transmission through a pipe line after such gas has passed through the outlet of such plant.

"Sec. 2. Every person, firm, association, or corporation liable for this tax shall keep books and records showing the quantity in thousand (1,000) cubic feet (corrected to the pressure specified in Section 1 hereof) of gas gathered by such person, firm, association, or corporation. Such books and records shall be maintained in this State and shall be open to the inspection of all officers authorized to enforce the collection of this tax. Every person, firm, association, or corporation liable for this tax shall make available for inspection by all officers authorized to enforce the collection of this tax, all meter charts kept by, or to which such person, firm, association, or corporation may have access.

"Any person, firm, association, or corporation required to keep the records prescribed by this Section shall be subject to a penalty of One Hundred (\$100.00) Dollars per day for each day's failure or omission to keep such required records.

"Sec. 3. The Comptroller of Public Accounts of this State, or his duly authorized representatives, shall administer and enforce the collection of the tax imposed by this Act. He shall have the power to enter upon the premises of any taxpayer liable for a tax under this Act, and any other premises necessary in determining the correct tax liability, and to examine, or cause to be examined, any books, or records of any person, firm, association, or corporation subject to a tax under this Act, and to secure any other information directly or indirectly concerned in the enforcement of this Act, and to promulgate and enforce, according to law, rules, and regulations pertinent to the enforcement of this Act, which shall have the full force and effect of law.

"Sec. 4. The tax herein imposed shall be due and payable at the office

of the Comptroller at Austin on the twenty-fifth day of each succeeding month, based on the business done the preceding calendar month, and on or before said date each such gatherer shall make and deliver to the Comptroller a verified report showing the gross amount of gas gathered, less the exclusions and at the pressure base set out herein, upon which the tax herein levied accrues, together with details as to amounts of gas, from what leases and/or plants said gas was gathered, the disposition thereof, and such other information as the Comptroller may require; such report to be accompanied by legal tender or cashier's check payable to the State Treasurer for the proper amount of taxes herein levied. The tax herein levied shall follow said gas into the hands of purchasers and/or subsequent purchasers and said purchasers or subsequent purchasers shall be liable for payment of the proper tax, penalties, and interest levied by this Act, if same have not been properly paid by the gatherer. Provided further, that the tax herein levied, being strictly an occupation or privilege tax for the privilege of engaging in the business of gathering gas, shall in no case be deducted from any payments due by purchasers to sellers of gas, under the provisions of any contracts in which the seller agrees to pay taxes levied upon the gas.

"Sec. 5. The Comptroller shall employ auditors and/or other technical assistants for the purpose of verifying reports and investigating the affairs of gatherers and/or purchasers to determine whether the tax is being properly reported and paid. Before any division or allotment of the occupation tax collected under the provisions of this Act is made, one-half ($\frac{1}{2}\%$) of one per cent of the gross amount of said tax shall be set aside in the Treasury for the use of the Comptroller in the administration and enforcement of the provisions of this Act, and so much of the said proceeds of one-half ($\frac{1}{2}\%$) of one per cent of the occupation tax paid monthly as may be needed in such administration and enforcement is hereby appropriated for such purpose.

"Sec. 6. In the event any person engaged in the business of gathering any gas in this State shall become delinquent in the payment of proper taxes herein imposed, or fail to file required reports with the Comptroller,

the Attorney General by a suit in the name of the State of Texas shall have the right to enjoin such person from gathering gas until the delinquent tax is paid, or said reports are filed, and the venue of any such suit for injunction is hereby fixed in the county in which the offense occurs.

"Sec. 7. If any person shall violate any of the provisions hereof, he shall forfeit to the State of Texas as a penalty not less than One Hundred (\$100.00) Dollars, nor more than One Thousand (\$1,000.00) Dollars, for each violation, and each day's violation shall constitute a separate offense. If any person shall fail to pay the proper tax within due date, he shall forfeit ten (10%) per cent thereof as penalty. Delinquent taxes and penalties shall draw interest at the rate of six (6%) per cent from due date. The State shall have a prior lien for all delinquent taxes, penalties and interest, on all property and equipment used by the gatherer of gas in his business of gathering gas, and if any gatherer of gas shall fail to remit the proper taxes, penalties, and interest due, or any of them, the Comptroller may employ auditors or other persons to ascertain the correct amount due, and the gatherer of gas shall be liable, as an additional penalty, for the reasonable expense or the reasonable value of such services of representatives of the Comptroller, incurred in such investigation and audit; provided, that all funds collected for audits and examinations shall be placed in a Gas Audit Fund in the Treasury and shall constitute a revolving fund which may be used from time to time by the Comptroller in making such audits in addition to the general appropriation made for such purpose, and all of said funds to be placed in said Gas Audit Fund are hereby appropriated for such purpose. The Attorney General shall file suit in the name of the State of Texas for all delinquent taxes and other amounts due, and for the enforcement of all liens under this law; and the venue of any such suit is hereby fixed in the County in which the offense occurs.

"Sec. 8. If any gatherer of gas fails or refuses to pay any tax, penalty or interest within the time and manner provided by this Act and it becomes necessary to bring suit or to intervene in any manner for the establishment or collection of said claim in any judicial proceedings, any

report filed in the office of the Comptroller by such gatherer or representative of said gatherer or a certified copy thereof certified to by the Comptroller of Public Accounts showing the amount of gas gathered on which tax, penalties or interest have not been paid, or any audit made by the Comptroller or his representative from the books of said gatherer or purchaser when filed and sworn to by such representatives as being made from the records of said gatherer or purchaser, such report or audit shall be admissible in evidence in such proceedings and shall be prima facie evidence of the contents thereof; provided however, that the incorrectness of said report or audit may be shown; provided further, that such report or audit may be admitted in evidence only against the party by or for whom it was made.

"In the event the Attorney General shall file suit or claim for taxes, provided for in the foregoing, and attach or file as an exhibit any report or audit of said gatherer or purchaser, and an affidavit made by the Comptroller or his representative that the taxes shown to be due by said report or audit are paid due and unpaid; that all payments and credits have been allowed, then unless the party resisting the same shall file an answer in the same form and manner as required by Article 3736, Revised Civil Statutes of Texas, 1925, as amended by Chapter 239, Acts of the Regular Session of the Forty-second Legislature, said audit or report shall be taken as prima facie evidence thereof, and the proceedings of said Article are hereby made applicable to suits to collect taxes hereunder.

"Sec. 9. Whoever shall, as a gatherer or as agent or representative of a gatherer, knowingly make any false entries or fail to make any proper entries in the books required by this Act with intent to defraud the State, or whoever as such shall knowingly make a false or incomplete report as required by the provisions of this Act, or whoever as such shall knowingly fail or refuse to make the report required to be made, or whoever, as such shall destroy, mutilate, or secrets any of the records required to be kept by the provisions of this Act, or whoever shall, as such, hide or secrete with intent to defraud, any of the property upon which a lien is created hereunder, shall be

guilty of a misdemeanor and upon conviction thereof, shall be fined in a sum of not less than One Hundred (\$100.00) Dollars, or be confined in the county jail not more than twelve (12) months, or by both such fine and imprisonment. In addition thereto, such gatherer or purchaser or agent thereof shall forfeit to the State of Texas, for any said offense or the violation of any of the provisions hereof, or any rule or regulation, a penalty of One Thousand (\$1,000.00) Dollars for each such offense to be recovered by the Attorney General in a civil suit in the name of the State of Texas, and the venue of such suit is hereby fixed in Travis County, and such suit may be brought separately or joined and made a part of any other civil suit provided for by this Act. The penalties prescribed in this Section, both criminal and civil, are in addition to any and all other penalties prescribed in this Law.

"Sec. 10. When it shall appear that a taxpayer to whom the provisions of this Act shall apply has erroneously paid more taxes than were due during any taxpaying period either on the account of a mistake or fact of law, it shall be the duty of the State Comptroller to credit the total amount of taxes due by such taxpayer for the current period with the total amount of taxes so erroneously paid."

Question—Shall the amendment be adopted?

Message from the House

The Reading Clerk of the House was recognized by the President to present the following message:

Hall of the House of Representatives,
Austin, Texas,
April 23, 1941.

Hon. Coke R. Stevenson, President of the Senate.

Sir: I am directed by the House to inform the Senate that the House has passed the following bill:

H. B. No. 941, A bill to be entitled "An Act providing for the deposit of moneys to the credit of a fund to be known as the 'Social Security Account'; creating the Social Security Account in the office of the State Treasury; providing for the allocation of the funds so accumulated; repealing all laws in conflict with this Act; and declaring an emergency."

Respectfully submitted,

E. R. LINDLEY,

Chief Clerk, House of Representatives.

Senate Resolution 107

Senator Vick by unanimous consent, offered at this time, the following resolution:

Whereas, Mrs. Emma Shirley, with her class of thirty-five students from the Division of Secretarial Science of Baylor University School of Business is now in the City; now, therefore, be it

Resolved, That Mrs. Shirley and her class be extended the privileges of the floor of the Senate.

The resolution was read.

On motion of Senator Vick and by unanimous consent, the resolution was considered immediately and was adopted.

Adjournment

Senator Cotten moved that the Senate adjourn until 10:00 o'clock a. m. tomorrow out of respect to the memory of Mrs. Sanders, grandmother of Senator Lanning, who is to be buried at 4:00 o'clock p. m. in Wortham, Texas.

The motion prevailed; and the Senate, accordingly, at 12:05 o'clock p. m., adjourned until 10:00 o'clock a. m. tomorrow.

SIXTIETH DAY

(Thursday, April 24, 1941)

The Senate met at 10:00 o'clock a. m., pursuant to adjournment, and was called to order by President Stevenson.

The roll was called, and the following Senators were present:

Aikin	Martin
Beck	Mauritz
Brownlee	Metcalfe
Chadick	Moffett
Cotten	Moore
Fain	Ramsey
Formby	Shivers
Graves	Smith
Hazlewood	Stone
Hill	Sulak
Isbell	Van Zandt
Kelley	Vick
Lanning	Weinert
Lemens	Winfield
Lovelady	York

Absent—Excused

Spears

A quorum was announced present.